IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 29TH NOVEMBER 2007 / 8TH AGRAHAYANA 1929

WP(C).No. 35371 of 2007(J)

OS.299/2005 OF MUNSIFF COURT, HOSDRUG

PETITIONER:

E.SHOBHANA, AGED 38 YEARS,
W/O.THUMBAN, ENGAYIL HOUSE, NEAR KUTTAMATH
GOVT. HIGHER SECONDARY SCHOOL, P.O.CHERUVATHUR,
CHERUVATHUR VILLAGE, HOSDURG TALUK.

BY ADV. SRI.T.K.VIPINDAS.

RESPONDENTS:

1. **E.DEVAKI AMMA, AGED 60 YEARS,**
   W/O.LATE M.APPU NAIR, RESIDING AT ENGAYIL HOUSE,
   VADAKKUMBADY, P.O.CHERUVATHUR,
   CHERUVATHUR VILLAGE.

2. **E.PADMINI, AGED 38 YEARS,**
   D/O.E.DEVAKI AMMA, RESIDING AT ENGAYIL HOUSE,
   VADAKKUMBADY, P.O.CHERUVATHUR,
   CHERUVATHUR VILLAGE.

3. **M.GOVINDAN NAIR, AGED 45 YEARS,**
   RESIDING AT KUTTAMATH, CHERUVATHUR VILLAGE,
   HOSDURG TALUK.

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 29/11/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N. KRISHNAN, J.

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W.P.C. NO. 35371 OF 2007

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Dated this the 29th day of November, 2007.

J U D G M E N T

This writ petition is preferred against the order of the Munsiff, Hosdurg in I.A.5075/07 in O.S.299/05. It was an application for amendment of the plaint. In the original plaint the plaintiff claims right of lateral support to her A schedule property from the B schedule property. Subsequently, after the evidence was closed she has moved an application for amendment whereby she wants to substitute that right as one for easement by prescription. The natural right of lateral support and claim of easement by prescription are two independent different fields and therefore if an amendment is allowed it will change the character of the suit and it will prejudicially affect the right which is accrued to the defendant. Secondly, the suit is one of the year 2005 and the amendment application is filed almost after the evidence is closed. Under the amended CPC

Order 6 Rule 17, amendment application has to be filed before the trial commences and not after the trial is almost over. Unless there are exceptional circumstances the Code does not permit amendment. So, the learned Munsiff had approached the matter in the correct perspective and found that (1) the amendment will change the fundamental character of the suit, (2) that it will adversely affect the interest of the defendant and (3) that it is highly belated which is not permissible under Order 6 Rule 17. I do not find any illegality, irregularity or perversity in the order of the Court below. Therefore, the writ petition lacks merit and it is dismissed.

M.N. KRISHNAN, JUDGE.

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